

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: May 25, 2023

+ W.P.(C) 7364/2023 & CM Appls. 28683/2023, 28711/2023

JAIBIR SINGH

..... Petitioner

Through: Mr. Anilendra Pandey, Adv.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Yeeshu Jain, Addl.  
Standing Counsel with  
Mr. Jyoti Tyagi and  
Ms. Manisha, Advs. for  
respondents

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**V. KAMESWAR RAO, J. (ORAL)**

**CM Appls. 28683/2023 & 28711/2023**

Allowed, subject to just exceptions.

Application disposed of.

**W.P.(C) 7364/2023**

1. The challenge in this petition is to an order dated March 14, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in O.A. 718/2018 whereby the Tribunal has dismissed the O.A. filed by the petitioner by stating as under:-

*"9. Having considered the legal position involved in the present case, we are of the considered view that the case of the applicant falls in the same category, where the Apex Court has held that the*

*Recruitment Rules prevails over the Advertisement (supra). Hence, the present OA lacks merit and is dismissed accordingly. No costs."*

2. The challenge of the petitioner before the Tribunal was with regard to an order dated January 19, 2018 issued by the Vice Principal, Government Boys Senior Secondary School whereby he was relieved from the post of Lecturer, Physical Education (Guest Teacher).
3. The petitioner, pursuant an advertisement issued by the respondents had applied for the said post. The advertisement stipulated the maximum age limit as 36 years. Based on the application, the petitioner having been found successful, was appointed on the said post.
4. It is the case of the petitioner that in terms of order dated January 18, 2018 he had joined his posting as a Guest Teacher. However, one day thereafter he was relieved in terms of the corrigendum issued on January 19, 2018, which is not tenable.
5. The case of the respondents before the Tribunal was that the depiction of the maximum age limit of 36 years in the advertisement was not in conformity with the recruitment rules as the same prescribe the maximum age limit of 30 years for general candidates.
6. It was also the stand of the respondents before the Tribunal that on the error being noticed, the corrigendum dated January 19, 2018 was issued.
7. The learned counsel for the petitioner would contend that once the petitioner has appeared in the selection process and having been found successful, appointed and also joined, his appointment could not have been cancelled. He also submits that the reliance placed by the Tribunal on the judgment of the Supreme Court is misplaced. The Judgment is clearly

distinguishable inasmuch as in the said case, the candidature was cancelled during the selection process, not after appointment as is the case here.

8. Mr. Yeeshu Jain appearing for the respondents would submit that a notice dated January 16, 2018 was issued by the respondents wherein it is clearly stated:-

*“1. Give the concerned Guest Teachers manual joining if the teacher fulfills all eligibility condition for his/her particular posts/subjects laid by DOE as per existing RRs.”*

9. He states in view of the notice dated January 16, 2018, the petitioner could not have been appointed being over-aged. He also states, despite notice dated January 16, 2018, the petitioner joined the post. Immediately on coming to know the error, action has been taken to relieve the petitioner.

10. Having heard the learned counsel for the parties, we are not in agreement with the submissions made by learned counsel for the petitioner for the reason that he does not contest that the maximum age limit prescribed in the advertisement was at variance with the Recruitment Rules which prescribed that the maximum age limit as 30 years.

11. The only submission on behalf of the petitioner is that he having been appointed on the post concerned which he had joined, he could not have been relieved. Such a submission is without any merit for the simple reason that the impugned order which was challenged before the Tribunal was to bring the appointment in conformity with the Recruitment Rules which is any appointment necessarily be of a person who is below 30 years of age, which admittedly the petitioner was not, on the date of appointment.

12. Insofar as the submission of learned counsel for the petitioner that the judgment relied upon by the Tribunal in the case of **Malik Mazhar Sultan**

**and Anr. v. U.P. Public Service Commission & Ors., (2006) 9 SCC 507**, is distinguishable is concerned, the Supreme Court has clearly held that:-

*“Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules.”*

The Judgment clearly applies to the issue which arose for consideration before the Tribunal.

13. We are of the view that the Tribunal has rightly rejected the O.A.

14. In view of our discussion, we do not see any merit in the petition. The same is dismissed.

**V. KAMESWAR RAO, J.**

**ANOOP KUMAR MENDIRATTA, J.**

**MAY 25, 2023/ds**

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